At this stage Mr. Rajasooriya objected to the statement being tendered under section 24 of the Evidence Enactment, on the ground that the confession was not made voluntarily. The Magistrate agreed with Mr. Rajasooriya's contention, and rejected the confession. The following were his reasons:—

> "The evidence is clear that the accused was asked by the Deputy Chairman to make a statement. He had, therefore, no alternative but to make a statement. I therefore rejected the confession as it was not volunteered and cannot be said to have been voluntarily given, under section 24 of the Evidence Ordinance".

Section 24 of the Evidence Enactment is as follows:—

> "A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him".

I think the Magistrate was premature in rejecting this evidence—*prima facie* it was not caused by any inducement etc., but was made voluntarily. The Magistrate should, in my opinion, have required further details from the Deputy Chairman in regard to the circumstances under which the confession was made, *viz:* what he said to the respondent, and whether in fact there was any inducement, threat etc., for, in order that a confession may be admissible, it must be affirmatively proved that such confession was free and voluntary, that is, was not preceded by an inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed—see *The Queen v. Thompson,*[1]. Further it must be remembered that a confession does not become irrelevant, because the prisoner was not bound to answer questions or warned that evidence of such confession might be given (section 29 of the Evidence Enactment).

Mr. Grattan Bellew, in view of the above, asked for a new trial before another magistrate. In view of the unsatisfactory nature of the complainant's evidence, I had considerable doubts whether I should accede to this request. As however the integrity of Government and Municipal servants is a matter of great public importance, and as in this case all the available evidence was not considered by the Magistrate, I think there should be a new trial. I would only add that although both in the lower Court and on appeal it was assumed that the appellant's statement was in fact a confession, it may well be that it was nothing of the sort, or it may be that although the evidence was to the effect that such confession was made voluntarily, further questioning may elicit that such was not the case.

The appeal is accordingly allowed, and a new trial directed before another magistrate.

Appeal allowed. New trial ordered.

[ORIGINAL CIVIL JURISDICTION]

HOWES, J.

May 27, 1940.

ISSAR SINGH son of BHOLA SINGH & ANOR.

v.

SAMUND SINGH son of MAYIAH.

[PERAK CIVIL SUIT No. 89 of 1939]

Probate and Administration Enactment (Cap. 8), S. 158—resealing of letters of administration—right of administrator to sue only after letters of administration resealed.

An administrator, who has been granted letters of administration in any part of the British Dominions, is not entitled to sue in the Federated Malay States on behalf of the estate of a deceased person before the letters of administration have been resealed.

TRIAL OF SUIT.

Sharma for plaintiffs.

Thivy for defendant.

In this case Howes, J. delivered an oral judgment.

Howes, J.—In this case I think the wording of Section 158 of the Probate and Administration Enactment is clear. In cases where Letters of Administration, which have been granted in the United Kingdom or any other part of the British Dominions, are brought to this Court for resealing, an Administrator acquires his rights only on the date when the Letters of Administration are resealed.

Section 158 states that (subject to certain conditions contained in Section 159) Letters of Administration may be sealed with the seal of that Court (i.e. the F.M.S. Court), "and thereupon shall be of the like force and effect, and have the same operation in the Federated Malay States as if granted by that Court".

It is clear to me that until the Penang Letters of Administration had been sealed by the seal of this Court, the Administrator had no rights whatever in the Federated Malay States.

In the present suit, the Plaintiff filed his plaint in the Federated Malay States on the 1st of May 1939 on the strength of his having obtained Letters of

Administration in Penang, which were granted on the 25th of April 1939.

I think one must draw a hard and fast line in the case of resealing; just as much as in the grant of ordinary Letters of Administration. It is beyond dispute that in the ordinary way, an Administrator is not entitled to sue as such until he has obtained the grant of Letters of Administration.

At the time when the plaint was filed, the Plaintiff had no administrative capacity, so far as the Federated Malay States were concerned. The plaint might just as well have been signed by a stranger to the intestate —the plaintiff having no more rights in the intestate's property in the Federated Malay States than a stranger. That being so, I consider that the defence is good, namely, the Plaintiff had no power at the time of the issue of the plaint to institute this suit. There will therefore be judgment for the Defendant with costs.

Judgment for defendant.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

January 11, 1941.

MUTHUKARUPPAN CHETTY

v.

PUBLIC PROSECUTOR.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 18 of 1940]

Sanitary Boards Enactment (Cap. 137), By-law 87A—allowing cattle to stray in prohibited area—invalidity of by-law.

By-law 87A made under the Sanitary Boards Enactment (Cap. 137) is void in so far as it prescribes a fine not exceeding $10.00 in respect of every animal which is found straying or grazing in a prohibited area under the Enactment.

MAGISTRATE'S CRIMINAL APPEAL.

M. Morrison for Appellant.

A. J. Grattan Bellew, D.P.P., for Public Prosecutor.

Horne, J.—The appellant is the owner of certain cattle. The cattle when in charge of a herd, the owner's employee, were found straying in a ravine in which is situated a drain constructed as an anti-malarial measure.

The owner was charged with contravening Pahang By-law 87A made under the authority of Chapter 137 (Sanitary Boards):—

> "87A. (i) Whenever it appears to the Board that the grazing of cattle, sheep, horses, goats and pigs on any land is likely to be prejudicial or dangerous to health or favourable to the existence or propagation of mosquitoes, the Board may prohibit the grazing or straying of cattle, sheep, horses, goats and pigs on such land and shall erect and maintain thereon notice boards of such number and in such languages as may seem desirable proclaiming that such straying or grazing is prohibited.
>
> (ii) The erection of such notice boards shall be deemed to be sufficient notice to all persons that the straying and grazing of cattle, sheep, horses, goats and pigs on such land is prohibited.
>
> (iii) Any person who allows his cattle, sheep, horses, goats, and pigs to stray or graze in a prohibited area shall be liable on conviction to a fine not exceeding $10.00 in respect of every such animal".

Several objections to the conviction were raised by the grounds of appeal and were argued before me and I reserved judgment. On consideration it appeared to me that the by-law is void for there is no power to impose a penalty per head of cattle; and the parties through their advocates were given the opportunity of further argument but have decided to leave the matter to the Court.

The sections empowering a Sanitary Board to make by-laws are section 16 and section 17 of Chapter 137:—

> "17. (i) A Sanitary Board may in making any by-law prescribe the fine with which the contravention thereof shall be punishable, but so that such fine shall not exceed for any one offence the sum of fifty dollars or in the case of a continuing offence the sum of five dollars for every day during which such offence is continued.
>
> (ii) Any person who contravenes any by-laws for the breach of which no fine is prescribed and any person who fails to comply with the terms of any order lawfully made or any notice lawfully given by the Board or the Chairman under the provisions of any by-law, if no other penalty is prescribed, shall be punished with a fine which may extend to two hundred and fifty dollars or in the case of a continuing offence to the sum of ten dollars a day for every day during which such offence is continued".

The sub-by-law (iii) of By-law 87A provides however for "a fine not exceeding $10.00 in respect of every such animal". In the present case the appellant was prosecuted in respect of 27 heads of cattle and fined $135.00.

The rule of law as to the construction of by-laws applicable to this case is stated in *Hailsham* Volume 8, paragraph 82:—

> "A bye-law which is void in part is void altogether, except when the void part can be severed from that which is good, and the latter can be enforced independently".

Sub-by-law (iii) can be severed but upon severance the remainder of by-law 87A cannot be enforced independently. I must hold it to be void.

As the conviction must be quashed on this ground there is no need for me to deal with the other points as to the construction of this by-law, which have been raised in this appeal.

The appeal is allowed. The conviction quashed and the fine (if paid) is to be returned.

Appeal allowed. Conviction quashed.